

To: The Memphis City Charter Commission  
From: Stephen Wirls, Rhodes College  
Re: **MLG&W in the City Charter**  
30 October 2007

**Introduction:** Within the structure of Memphis city government, MLG&W is unusual. It has its own legislature (the Board of Commissioners) and its own chief executive (President). It is completely independent of the city's executive and administrative authority, but it is not completely independent of the City Council, which must approve rate changes, contracts of a certain duration, and contracts of a certain size.

**I. Summary:** MLG&W is regulated by Article 65 of the charter (C: 132-140) as amended by HRA, Ord. 3054 (C: 284-286). The Home Rule Amendments reorganize MLG&W internally. Specifically, they make the president independent of the MLG&W board of commissioners (no longer appointed by that board and no longer sitting on that board). This change establishes an internal separation of powers, with the MLG&W board as legislature and its president as chief executive. These amendments also reaffirm the independence of MLG&W in most policy-making and administration.

## **II. MLG&W as a "division:**

MLG&W is a division of government, which is distinguished from "administrative divisions." The Mayor's authority to "administer, supervise and control all divisions" (HRA, Ord. 1852, Section 4, ¶ 1, C: 229) extends only to the administrative divisions listed in HRA Ordinance 1852, Section 8: Fire and Police, Public Works, Public Service, Finance and Institutions, Administration and Welfare.

MLG&W is specifically and separately provided for in the charter and in a way that excludes the Mayor from all supervision and administration. All relevant administrative and supervisory powers are given to the MLG&W board of commissioners, the MLG&W president, and in some specific instances, the City Council.

### **Specific differences between MLG&W and the "administrative divisions":**

- A. The Home Rule charter does *not* include MLG&W in its list of "administrative divisions."
- B. "Administrative divisions" have "directors." MLG&W has a "president."
- C. The directors of administrative divisions serve conterminously with the mayor. The MLG&W president serves for a fixed five-year term

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D. Administrative divisions can be reorganized, divided, and abolished by the mayor and council. The MLG&W board is given full control over its internal organization.

E. The MLG&W board is also given broad control over MLG&W policy. It also has the power to contract independent of the Mayor's otherwise comprehensive contract authority. Some specific matters require approval of the City Council, not the Mayor.

### **III. Appointment, removal, terms of office for the MLG&W president and commissioners:**

President: Appointed by the Mayor, with the approval of a majority of the City Council.  
Removed by the Mayor with approval of the City Council.  
Term: Five Years.

Commissioners:  
Appointed in the same manner as the president  
Removed in the same manner as the president  
Term: Three years

**IV. Issues for the Charter Commission to consider:**

**A. Changing the designation of MLG&W to something other than simply "division":**  
This would eliminate the confusion created by that word.

**B. Sale of MLG&W:**

— The Charter says nothing about the sale of MLG&W.

— My opinion is that because MLGW is established in and by the charter, I do not think it could be sold without an amendment to the charter. This is true for MLGW as a whole and for any part of it because the charter requires that all "municipal utility systems" be under the jurisdiction of the Light, Gas and Water division as constituted in the charter (Art. 65, Sec 666, C: 132; HRA Ord. 3054, C: 285). Therefore, an additional amendment to the charter to require a referendum before any sale would be redundant.

The attorney general of Tennessee concludes the opposite: because MLG&W can dispose of its individual assets, it can then dispose of its entire operation.

Because the question of whether and how it could be sold is open to interpretation, I see no harm in adding a referendum requirement, even though it may be redundant.

**C. Appointment of the MLGW Board:**

The powers of appointment and removal affect the influence of the Mayor and the City Council over MLG&W.

The appointment and removal of the MLG&W president is clearly settled by the Charter: See above.

The appointment of MLG&W commissioners may be less clear, but the practice has been for the Mayor to appoint with the approval of the City Council.

The Mayor's leading role in the appointment and reappointment of all of the principal MLG&W personnel may give the Mayor undue influence over MLG&W policy and administration. The City Council can refuse to approve, but the Mayor has a major advantage in those sorts of conflicts.

**Alternatives:**

- a. Appointment of commissioners by a super-majority of the City Council.
- b. Appointment of commissioners by the City Council from a list of nominees submitted by an independent body.

*how to  
manage  
accountability  
while  
keeping  
independence*

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### D. The contract authority:

Because the Mayor raised issues with the City Council's involvement in MLG&W's contract authority, I have outlined those powers below.

**General contract authority:** The Board of MLG&W has the authority to make any contract necessary and convenient to carry out its responsibilities (HRA, Ord. 3054, C:285, ¶ 3; Article 65, Sections, 677, 678, 681, C: 135-136).

### Limitations:

a. MLG&W cannot make a contract for the purchase of electricity or gas for longer than five years without the approval of the City Council (Art. 65, Sections 677, 678)

b. MLG&W needs approval for any contract above the amount established by City Council ordinance (HRA, Ord. 3054, ¶ 12; Art. 65, Section 681).

*this is  
clear in the  
charter*

*Rates*  
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## **Addendum: Outline of powers of the MLG&W board and president, and the related powers of the City Council**

### **MLG&W authority, general:**

It "shall have jurisdiction, control and management of energy systems..." (HRA, Ord. 3054, C: 284 Section 1, ¶1). [This general jurisdiction covers the individual authorizations for light, gas, and water systems (Article 65, Sections 677, 678, 679, C: 135-136)]. The 1980 amendments reaffirm all powers in Article 65 of the Charter (C: 285, ¶ 2); the MLG&W board "shall have all other powers which presently exist in said Board as now provided in the Charter of the City of Memphis."

### **MLG&W board authority:**

Unless otherwise noted, the following powers can be found at HRA, Ord. 3054, Section 1, C: 285. Article 65, Section 699 (C: 140) mandates a broad construction of Article 65, which establishes MLG&W: "this Act is hereby declared to be remedial in nature, and the powers hereby granted shall be liberally construed to effectuate the purposes hereof, and to this end the Memphis light, gas and water commissioners shall have power to do all things necessary or convenient to carry out the purposes hereof, in addition to the powers expressly conferred in this Act."

- "[S]hall have the power and authority to construct, purchase, improve, operate and maintain, within the corporate limits of the City of Memphis or elsewhere within the limits of Shelby County, or as permitted by State law, the energy systems as set forth above including all necessary equipment, property, rights-of-way, easements, and all other appurtenances usual for such facilities."
- "[S]hall have authority to make a schedule of rates for said energy systems and for different classes of consumers in accordance with the provisions now provided for establishing service rates."
- "[S]hall have the right to make any and all contracts concerning such energy systems in accordance with the provisions now provided for contracts" (See also Section 681, C: 136). This reaffirms the broad contract powers in Article 65 (Sections 677, 678, 681). The City Council must approve all contracts over an amount specified by a Council ordinance and all purchasing contracts of over five years (see below).
- To "contract with any person, federal agency, municipality, or public or private corporation for the construction or purchase of energy systems including joint ventures, partnership, or other financial arrangements."  
**Restriction:** These contracts must have "the consent of the City Council" and can be made only "under such terms and conditions as are approved by the City Council" HRA, Ord. 3054, Section 1, ¶ 3 (See also Section 681, C: 136).
- To "establish different divisions of the Memphis Light, Gas & Water Division for assigning of the separate energy functions or for the efficient operation of the Memphis Light, Gas & Water Division."
- To "authorize and approve" loans between divisions within MLG&W.

- To "provide for the organization of its own Board and for such other subordinate officers and employees as the Board deems appropriate" (This overrides Section 674, C: 134).
- To "enter into such banking contract or contracts as it may determine under the procedures set forth for banking contracts for the City of Memphis."
- To "provide for the investment and reinvestment of its funds and reserves as determined in the discretion of the Board of Commissioners."  
[This provision also eliminates any restrictions on the board's latitude in making investments.]
- To establish and regulate new energy systems.
- To "condemn any land, easements...for any and all purposes...of said electric system, gas system, or water system" (Section 684, C: 137). Only condemnations of land currently used for public purposes require City Council approval (Section 684, C: 137).

#### **MLG&W president's authority:**

The 1980 amendments (HRA, Ord. 3054) give no new authority to the president. His powers and duties carry over from Article 65 of the charter: He "shall have general supervision over the operation of said light, gas and water division and of all officers and employees of said light, gas and water division" (Section 672, C: 133). This authority is "subject to the regulations of the board."

#### **Duties (Section 672, C:133):**

To "keep the board of light, gas and water commissioners advised as to the general operating and financial condition of said light, gas and water division."

To "furnish such other information to the [The City Council] as they may request."

To "furnish a monthly report to [the City Council] with regard to the operation, maintenance and financial condition of the light, gas and water division."

#### **City Council authority:**

[NB: The 1980 amendments (Ord. 3054), eliminate the provision for a member of the City Council to attend MLG&W board meetings and to approve its actions (Section 11, C: 285)].

#### **In HRA, Ord. 3054, Section 1, C: 284**

To "assign the management or control of the manufacture, production, distribution and sale of energy from refuse or sludge or other properties collected and controlled by other departments of the City upon such terms and conditions as the Council shall prescribe".

To prescribe other functions by ordinance .

To approve rate changes as provided in the charter.

To “consent” to and prescribe the “terms and conditions” of any contract “with any person, federal agency, municipality, or public or private corporation for the construction or purchase of energy systems including joint ventures, partnership, or other financial arrangements.”

To approve changes in the number of required meetings.

To approve banking contracts.

To “raise the amount of contracts and salaries or compensation for employees or others requiring City Council approval” and to “raise by ordinance the amount of equipment, materials or supplies requiring newspaper advertisement for competitive bids.”

To consent to actions concerning “new energy systems.”

#### **In Article 65:**

To set the salaries of the president, vice-president, and board (Section 671, C: 133).

To approve all MLG&W condemnations of any property “devoted to another public use” (Section 684, C: 137).

To approve certain bond issues (Section 686, C: 137).